IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 20084 of 2006(N)

(IA.NO.896/06 IN OS.232/2004 of MUNSIFF COURT, DEVIKULAM)

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PETITIONER:

BAIJU, S/O. DAMODARAN,
RESIDING AT PUTHENKUDIYIL HOUSE,
ANACHAL KARA, KUNCHITHANNY VILLAGE,
DEVIKULAM TALUK, IDUKKI DISTRICT.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENT:

M.M.MATHEW,
ADVOCATE, S/O. MATHAI, RESIDING AT
MACHUKATTU HOUSE, ANACHAL KARA,
KUNCHITHANNY VILLAGE, DEVIKULAM TALUK,
IDUKKI DISTRICT.

BY ADV. SRI.M.NARENDRA KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.20084/2006 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE 'A' DIARY OF PROCEEDINGS IN O.S.NO.232/2004 DTD. NIL.**

EXT.P2: **COPY OF THE I.A.NO.896/2006 FOR AMENDMENT OF THE SUIT DTD. 15/06/06.**

EXT.P3: **COPY OF THE OBJECTION TO AMENDMENT APPLICATION DTD. 16/06/2006.**

EXT.P4: **COPY OF THE ORDER IN I.A.NO.896/2006 DTD. 05/07/2006.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 20084 of 2006

Dated this the 11th day of July , 2007

JUDGMENT

The learned counsel for the respondent sought for time. But I am not inclined to grant the adjournment since I do not find any way to sustain Ext.P4 which is a cryptic order and does not refer at all to any of the contentions raised in Ext.P3.

2. In this writ petition under Article 227 of the Constitution, the petitioner impugns Ext.P4 order passed by the learned Munsiff on I.A.No.896/2006, which was the second application for amendment filed by the respondent/plaintiff. Ext.P3 is the detailed objection filed by the petitioner to the amendment application. I find that the learned Munsiff does not even refer to the objections at all while passing Ext.P4. Though it may be true that amendments which are necessary for resolving the real controversy in the suit are to be allowed provided, the court should ensure that the amendment does not result any prejudice to the adversary in the litigation. I expect the learned

Munsiff to consider Ext.P3 and pass an order which is not as cryptic as Ext.P4 is.

I set aside Ext.P4 and direct the learned Munsiff to hear the parties once again on I.A. No.896/2006 and pass fresh orders. Fresh orders as directed above will be passed by the learned Munsiff at the earliest and at any rate within three weeks of receiving a copy of this judgment.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

dpk